



FISCAL MEMORANDUM

SB 666 - HB 885

March 27, 2023

SUMMARY OF BILL AS AMENDED (006456): Creates the *Prior Authorization Fairness Act*. Requires a utilization review organization that make an initial adverse determination for a prior authorization of a healthcare service to include outlined information to the enrollee and the enrollee's healthcare provider requesting the prior authorization on the enrollee's behalf. Does not apply to an initial adverse determination for prescription drugs that are covered under an enrollee's benefit plan. Requires an adverse determination for a request for prior authorization for a healthcare service or a prescription drug submitted electronically be made by a physician or a healthcare professional with the same license as the healthcare professional requesting the prior authorization. Requires all prior authorization adverse determination appeals be reviewed by a Tennessee licensed healthcare professional with the same or similar specialty as the requesting provider.

Requires utilization review organizations perform: (1) non-urgent prior authorization reviews within seven calendar days; and (2) urgent prior authorizations within 72 hours, plus one additional business day, if applicable. Establishes that utilization review organizations must review all prior authorization adverse determination appeals that are not submitted electronically in accordance with standards set by the National Committee on Quality Assurance. Establishes that electronic prior authorizations are deemed approved if the health carrier or utilization review organization fails to approve or deny the request or request all additional information needed to make a decision within such timeframes.

Prohibits health carriers from requiring prior authorization for coverage of emergency services. Establishes that a prior authorization required for an outpatient healthcare service for the treatment of a chronic condition of an enrollee remains valid for at least six months from the date the healthcare professional or provider receives the prior authorization approval. Requires a health carrier maintain a complete list of healthcare services for which a prior authorization is required. Outlines the clinical criteria for a health carrier requiring prior authorization. Requires a health carrier or utilization review organization to accept and respond electronically to prior authorization requests from a healthcare provider submitted through a secure electronic transmission. Requires all prior authorizations for healthcare services be valid for six months from the date of approval.

Prohibits a utilization review organization and health carrier from requiring prior authorization for prescription drugs for the treatment of opioid use disorder, except for behavioral health inpatient services. Establishes that restrictions on coverage of emergency healthcare services provided by nonparticipating providers must not be greater than restrictions that apply when participating providers provide those services.

Outlines notification requirements a health carrier or utilization review organization must provide to healthcare providers in its network of each new prior authorization requirement.

Requires a health carrier or utilization review organization to pay a healthcare provider at the contracted payment rate for a healthcare service provided by the healthcare provider per an approved prior authorization. Outlines exceptions. Requires a health carrier to pay a healthcare provider for performing a healthcare service if the prior authorization for the service was obtained by another healthcare provider. Requires a health carrier to provide reimbursement for healthcare services retroactively deemed medically necessary regardless of when prior authorization was approved. Requires payment to be guaranteed when a prior authorization is approved, for a maximum of 18 months. Does not apply to prescription drugs that are covered under an enrollee's benefit plan.

Outlines criteria for reviewers of utilization review activities. Requires a health carrier or utilization review organization requiring prior authorization make de-identified aggregate statistics available by service code regarding prior authorization approvals and denials on its website in a readily accessible format.

Requires the Commissioner of the Department of Commerce and Insurance (DCI) to determine the information required to comply with this section. Requires a health carrier or utilization review organization review their prior authorization requirements at least annually and make changes as necessary.

For the purpose of promulgating rules, takes effect upon becoming a law. For all other purposes, takes effect January 1, 2025.

FISCAL IMPACT OF BILL AS AMENDED:

NOT SIGNIFICANT

Assumptions for the bill as amended:

- The proposed legislation does not apply to the TennCare program, the CoverKids program, or to policies of insurance issued pursuant to a contract with the Division of TennCare.
- According to information provided by the Division of Benefits Administration, the requirements of the proposed legislation can be accommodated within existing resources.
- The proposed legislation will not have a significant impact on the policies or procedures of the DCI; therefore, any fiscal impact is estimated to be not significant.

IMPACT TO COMMERCE OF BILL AS AMENDED:

Other Commerce Impact - The proposed legislation may result in an increase in business expenditures to health carriers to comply with the proposed legislation. However, due to multiple unknown factors, a precise impact to commerce cannot be reasonably determined.

Assumption for the bill as amended:

- The proposed legislation may result in an increase in business expenditures to health carriers to comply with the proposed legislation. However, due to multiple unknown factors, a precise impact to commerce cannot be reasonably determined.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink that reads "Krista Lee Carsner". The signature is written in a cursive, flowing style.

Krista Lee Carsner, Executive Director

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